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COMMITTEE ON GOVERNMENT, MILITARY AND VETERANS AFFAIRS  
February 16, 2006  
LB 1059, 1106, 1185

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Thursday, February 16, 2006, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB 1059, LB 1106, LB 1185, and Gubernatorial Appointments. Senators present: DiAnna Schimek, Chairperson; Carroll Burling; Deb Fischer; Chris Langemeier; Mick Mines; Rich Pahls; and Roger Wehrbein. Senators absent: Pam Brown, Vice Chairperson.

SENATOR SCHIMEK: Welcome to the hearings of the Government, Military and Veterans Affairs Committee. We're pleased to have you with us today. For the record, my name is DiAnna Schimek and I chair the committee and I will introduce the committee. Starting clear on my far left with Senator Deb Fischer of Valentine. Next to her is Senator Chris Langemeier of Schuyler. Next to me is Sherry Shaffer who is the committee counsel (sic). To my right is Christy Abraham who is the legal counsel to the committee. To her right is Senator Carroll Burling of Kenesaw. And last but not least, Senator Rich Pahls of Omaha/Millard. We will take the confirmation hearing first today and then we will take bills; LB 1059, LB 1106, and LB 1185. I don't expect any of these bills to have tremendous numbers of testifiers today. But I would even, in spite of that fact, caution you not to be too repetitive and not to take too much time. I'm not going to set any limits today but if you go over five minutes, you're going to be in big trouble probably. (Laughter) We would like for you to sign on one of the sign-in sheets if you are testifying, drop it in the box up here on the desk. And those sign-up sheets are near the door. When you come to testify, there will be proponents and then I'll ask for opponents and then neutral. Please say your name and spell your last name particularly, or your first name if it's somewhat of a different spelling. That's for our transcribers. If you have information that we need to copy and distribute to the committee, we can do that, we will do that. And if you have cell phones, please turn them off now. Senator Roger Wehrbein of Plattsmouth has just joined us. And I think that we're ready to start with the conformation hearings. So Brian Tessman, would you like to come forward?

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CONFIRMATION HEARING ON  
BRIAN TESSMAN TO THE  
STATE PERSONNEL BOARD

SENATOR SCHIMEK: And Brian, I can't remember, you are a reappointment, that is right?

BRIAN TESSMAN: Yes, that is correct.

SENATOR SCHIMEK: You have been before this committee before, then?

BRIAN TESSMAN: Yes, about five years ago.

SENATOR SCHIMEK: Right, and so you probably know but I'll just say it for your benefit that we'd just like a short statement from you about your qualifications for the State Personnel Board and a little bit maybe about the Personnel Board or whatever you really want to tell us. And then we'll ask any questions if the committee has any.

BRIAN TESSMAN: Certainly. My name is Brian Tessman. I live in Omaha, Nebraska, and I'm a graduate of Hastings College, where I earned a bachelor's in human resources management. And I'm currently employed by Harrah's Entertainment. And in that capacity as a front services supervisor, I use different functions of human resources on a day-to-day basis and also bring several years of experience in the human resources area. This is my fifth year on the State Personnel Board and I really enjoyed it. In working with the Department of Administrative Services, their staff have been outstanding. Our current board members and our past board members have just been wonderful. Our chairman, Sam Seever, I always learn something new from him every day that I come to a hearing. But it's really been just a really great education and I enjoyed serving.

SENATOR SCHIMEK: Okay, thank you, Brian. Are...Senator Burling has a question.

SENATOR BURLING: Welcome, Brian.

BRIAN TESSMAN: Senator.

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SENATOR BURLING: How often does the Personnel Board meet?

BRIAN TESSMAN: We generally meet about once a month, depending on what is before us. Sometimes it'll be every other month.

SENATOR BURLING: And you've been on now five years, so are the challenges about the same as they were all the time or are they changing?

BRIAN TESSMAN: The challenges are about the same. However, we've seen a decrease in our number of cases that come before us.

SENATOR BURLING: Okay.

SENATOR SCHIMEK: Any other questions from the committee? Yes, Senator Wehrbein.

SENATOR WEHRBEIN: I wasn't, thank you. I wasn't going to ask, why have we seen less cases?

BRIAN TESSMAN: I think because the Department of Administrative Services have done a great job of taking care of employee issues. There's a lot less grievances that come all the way before the State Personnel Board, they're handled much earlier in the process.

SENATOR WEHRBEIN: Do you have anything to say about the policy setting of those personnel policies over at DAS or they pretty well make them themselves?

BRIAN TESSMAN: They pretty much make them themselves. However, we do look at the rules as a board.

SENATOR WEHRBEIN: Thank you.

SENATOR SCHIMEK: Senator Langemeier has a question.

SENATOR LANGEMEIER: Thank you, Chairman Schimek. And Mr. Tessman, I appreciate you coming down. Tell me a little, and I'm going to follow up on Senator Wehrbein's question there. Tell me a little bit about what, when you meet, what are you meeting on? What do you see your role on

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this board?

BRIAN TESSMAN: Just a little bit about, say, for example, we receive these cases in advance. We review them. A lot of those cases may be somebody felt that they were unfairly overlooked for a promotion, a reclassification issue in their position. And our board determines if, in fact, it was right or if we should uphold that grievance. Does that pretty much answer your question?

SENATOR LANGEMEIER: Briefly, thank you.

SENATOR SCHIMEK: Then what if the employee isn't satisfied with the verdict? Is that then appealable somewhere?

BRIAN TESSMAN: The way I guess I would put it is we're the final process, a final step in the grievance process.

SENATOR SCHIMEK: Okay. Seeing no further questions, thank you for being with us very much. We appreciate your coming down from, I believe you live in Council...no, you live in Omaha now.

BRIAN TESSMAN: I live in Omaha, um-hum.

SENATOR SCHIMEK: You work in Council Bluffs.

BRIAN TESSMAN: Yes, that's correct.

SENATOR SCHIMEK: So your residency is still Nebraska?

BRIAN TESSMAN: Yes.

SENATOR SCHIMEK: One other question that I meant to ask. What's a front services supervisor? You just sort of alluded to what that...

BRIAN TESSMAN: Actually, I oversee the valet operations and transportation department for both Harrah's and Bluffs Run Casino.

SENATOR SCHIMEK: Okay, I think that is mentioned on the second page here. Okay, thank you very much.

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BRIAN TESSMAN: Great, thank you.

SENATOR SCHIMEK: Are there any who wish to testify in favor of this nominee, any in favor? Any in opposition? Any in a neutral capacity? Seeing none, that will close the conformation hearing and thank you for being with us.

BRIAN TESSMAN: Thank (inaudible).

LB 1059

SENATOR SCHIMEK: Okay, we will now move to the first bill on the agenda which is LB 1059 and I'll give the gavel to Senator Wehrbein, I guess, today. I didn't alert you but I think that's okay.

SENATOR WEHRBEIN: Okay.

SENATOR SCHIMEK: Good afternoon, members of the Government, Military and Veterans Affairs Committee and Mr. Chairman. For the record, my name is DiAnna Schimek. I represent the 27th Legislative District, the "Historic District." Actually, I'd like to tell you how this bill came to be introduced. I was approached by the person who lobbies for the Lincoln Public Schools and telling us that we needed some way for school districts who had suffered some kind of a disaster to be able to make emergency expenditures. And so the catalyst, as I understand it, for this bill was the tornado which hit the Norris school district several years ago. And as you remember, that school was damaged. And with LB 1059, the school district facing such a situation would be able to make emergency expenditures regardless of existing statutory limitations such as levy limits and enter into contracts without the necessity of competitive bidding because, of course, sometimes you need to do something immediately like get the roof covered or whatever it might be. The expenditure would have to be approved by the school board and the school district has to secure a certificate from the emergency management director that such action is necessary. So with that, I know that there will be people here from the Norris school district and maybe others as well to fill you in a little bit from their perspective on this bill.

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SENATOR WEHRBEIN:      Questions?      This is necessary, school districts don't fall under local government? Or is...

SENATOR SCHIMEK:      It's my recollection that the problem, part of the problem is that school districts don't have emergency management.      They're not under the emergency management statutes.      So there has to be some way to help them meet these kinds of situations.      And if we try to do it, in fact, I think that was the original intention, was to do it from that direction but it became very complicated.      So what we're seeing now in this bill is they just have to have the approval of the emergency management director in their area.

SENATOR WEHRBEIN:      Okay.

SENATOR SCHIMEK:      And then they can go to their school board and get permission.

SENATOR WEHRBEIN:      It's not an issue.      We've gone 50 years and not had this issue come up.

SENATOR SCHIMEK:      Right, and it may not come up for another 50 years.

SENATOR WEHRBEIN:      Or 150 years.

SENATOR SCHIMEK:      You don't know.

SENATOR WEHRBEIN:      Senator Langemeier.

SENATOR LANGEMEIER:      Chairman Wehrbein, thank you.      Senator Schimek, typically in the past when you get the designation of emergency management, that would indicate that you're going to get some funds federally upon that designation.      Are the schools just trying to get in that limelight, to get in that funding pot as you have those?      Or if not, how do you perceive paying for these emergency expenses with levy limits and...

SENATOR SCHIMEK:      Well, as I understand it, they would have to be paid out of the regular school budget.      But I have not talked with the people from Norris and they may have a

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different idea about that. But I don't believe there's any school district in the state that comes under the emergency management statutes. And I don't think we really want to go their either. It would mean hiring more personnel and doing a whole litany of things. So this would seem to be a better approach to that. And again, if I'm understanding everything correctly, that's my answer, it isn't, you can subtract that.

SENATOR LANGEMEIER: Great, thank you.

SENATOR WEHRBEIN: Okay, anyone else? Thank you.

SENATOR SCHIMEK: Thank you.

SENATOR WEHRBEIN: Proponents?

REX SCHULTZE: (Exhibit 1) Good morning, members of the committee. My name is Rex Schultze, S-c-h-u-l-t-z-e. I'm an attorney with the firm of Perry, Guthery, Haase, and Gessford here in Lincoln, Nebraska. I'm actually appearing here today on my own behalf and not on behalf of the Norris Public School District or, in fact, any school district that we represent, although our firm has an emphasis in representing school districts all over the state, from Gering to Falls City. I'm really here because LB 1059 is a needed piece of legislation for that catastrophic circumstance that we all hope doesn't befall a school but did befall the Norris public schools on May 22 of 2004. And we found ourselves in a unique situation of having our school destroyed and yet, having to find a way to operate that school in the fall of 2004 some way. And if we were required to comply with the bid statutes that school districts are required to meet with regard to contracting for public works, there's no way that this could have occurred. What we did was is we sought assistance under the Emergency Management Act through the Lancaster County emergency management director to seek and obtain his certification to allow us to proceed with contracting. And we used a construction management firm, to go out and get the emergency work that we needed to do, get our roof secured, started with cleanup. I recall the superintendent asking me the Monday after the tornado hit, which was on a Saturday, whether or not the school was responsible for the

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steel girders across the road. And I pointed out that the law was, is if he could identify it as his, it was his and he had to remove it. And that all costs money. I'd like to address Senator Langemeier's question with regard to funding. What the statute provides, and if you have LB 1059 before you, it points out that if there is a civil defense emergency, each local government and, Senator Wehrbein, local government as defined within the Emergency Management Act would not include school districts...it's counties, cities, or a school district may make emergency expenditures, enter into contracts, and incur obligations for emergency management purposes regardless of existing statutory limitations. And they include budgeting and levies. So there would be some need in those circumstance for relief from the levy limitation, the \$1.05 or the \$1 under 77-3442, which is...and I wanted to clarify that, which is why I handed out kind of a suggested additional amendment just to make sure that that's clear. First of all, there may be some concern, well, gee, we're going to have, we're providing an exemption to the levy. Let me explain to you or at least kind of give some premise on how that might happen or work. In our particular circumstance in Norris, the eventual damages were \$36 million. Our insurance initially appeared to cover \$28 million of that. We were then, through hard work and examination of our insurance policy, to cover an additional \$5 million, so we were just \$3 million short. We did get assistance from FEMA and NEMA, not withstanding the status of the statutes now. We do fall within that framework, but still fell \$1.5 million short. We were able to fund that because we were able to fall under the indoor air quality hazardous abatement levy and be able to raise 5.2 cents for a period of time of five years to cover our shortfall in that regard. But had our expenditures exceeded that, we would have a very difficult time paying our bills and making the repairs that were necessary to do that. Now I think what is significant here is this ability to exceed the levy limits has a limitation. And one is, one, it has to be approved by the Board of Education. But it can only be approved by the Board of Education if it is first certified that it is necessary by the emergency management director. So there's a control circumstance that limits your ability to do that. Our feeling is, is that schools are uniquely situated and we found this out when we worked through our insurance company,



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is that, in most circumstances, if a business gets hit or even a state agency of some kind gets hit, they can find temporary quarters easily to conduct their business. They can find a warehouse, they can find another building. The difficulty is, schools are very much different and we can't wait to find places to educate children. We have an obligation to do so under state law. And so we have to have this ability to move quickly and act quickly. I will tell you that, but for the assistance of the Lancaster County emergency management director, we would not have opened Norris Public Schools on September 7 of 2004. And that's a whole remarkable story in and of itself. So it is a needed piece of legislation. It is a piece of legislation, as Senator Wehrbein pointed out, might not be used for 50 years or 150 years. But I think the purpose of the Emergency Management Act is, as we've seen in recent past with other disasters around the country, is for people to be able to act quickly, to secure the safety and security of our citizens, and this is one vehicle that we should have at our disposal to help students and schools. So I thank Senator Schimek for introducing this bill. I think it's an important bill for our schools in this state. And I would ask this committee to pass it along to the floor of the Legislature.

SENATOR WEHRBEIN: Senator Burling.

SENATOR BURLING: Thank you for coming, Mr. Schultze. Did your experience with the Lancaster County emergency development director was not a good experience or...

REX SCHULTZE: It was a great experience.

SENATOR BURLING: Okay, so if that was a satisfactory arrangement, then...

REX SCHULTZE: Well, we were limited, Senator, on what we could do because we were not named in the act as a local government. So we didn't feel that we could pursue all the relief that's provided in here. What we did was, under their auspices and with their certification, we went forward with obtaining contracts by way of time and materials. Because we felt that was the only way we could do it and have some sort of authorization. But to get the full gamut

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of what's available under this act, we feel that the school districts need to be named in addition to local government because we are not a local government under the act. So we had a great experience. Doug Ahlberg was wonderful. But we had to work within the framework and limitations of what the emergency management director felt we could do.

SENATOR BURLING: Okay.

SENATOR WEHRBEIN: Senator Mines.

SENATOR MINES: Thank you, Senator. Just to follow up on Senator Burling's question and understand that I don't understand emergency management. But from a practical perspective, isn't that the job of the Lancaster County emergency manager as opposed...or isn't that the job of an emergency manager is to respond to emergencies, whether they're in a school or a community...

REX SCHULTZE: Yes, sir.

SENATOR MINES: ...and do you feel that the school didn't receive as much as you could have received on your own? Would that be a fair statement? In other words, had the school had the same authority, do you feel you would have received better service, better federal assistance, better anything?

REX SCHULTZE: Let's see if I can answer the question. There was no problem with the services received either from the emergency manager director of Lancaster County or NEMA or FEMA. What we're looking for is what was our authority to help ourselves, what could we do to help ourselves, not seek services from others. The statute allows each, as it reads now before the amendment, each local government...that's city, county, village...may make emergency expenditures. Well, we as a school district needed to make emergency expenditures. So we're seeking clarification of the authority to make those emergency expenditures to help ourselves. As far as services from the Lancaster County emergency management director, I could not have asked for anything more. I mean, we had a response within 48 hours of our request to receive the assistance that we asked for.

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SENATOR MINES: Right.

REX SCHULTZE: So we are...

SENATOR MINES: But I wonder if that isn't the way it's supposed to work and has worked for however long it's been.

REX SCHULTZE: Well, Senator, I don't...and my response to that is I don't believe that's the way it's supposed to work.

SENATOR MINES: Don't they understand emergency management better than a principal or superintendent or a school board might? I mean, wouldn't you rely on them anyway?

REX SCHULTZE: Sure, but there's a distinction between emergency management and contracting for getting my roof repaired...

SENATOR MINES: Um-hum.

REX SCHULTZE: ...contracting for the removal of debris, contracting to make sure that downed power lines are removed so that we take care of our own safety concerns. The emergency management director cannot contract for the Norris public schools. The Norris public schools must obtain those contracts. The Norris public schools must go out and find the money to pay for those things that are not going to be covered either by federal assistance or state assistance.

SENATOR MINES: But they can do that with and under the authority of an emergency management, like Lancaster County. Is that fair?

REX SCHULTZE: No, because under the act as it is written right now, the emergency management director is, we simply consult him to get certification that we can go make these expenditures.

SENATOR MINES: Okay.

REX SCHULTZE: All right, and school districts are not included under the definition of local government; only

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cities, villages, and counties.

SENATOR MINES: Right.

REX SCHULTZE: So we need to be included within that level of authority to be able to go out and do that contract.

SENATOR MINES: Sure, okay. One other question, Senator, if I could. Again, this isn't my expertise. However, my concern would be unintended consequences. Certainly, it sounds reasonable that a school should be allowed to contract for services that you have described. What I don't know is what else is involved. If in fact a school were given the authority to undertake whatever process they need in an emergency, whatever emergency is, a disaster or whatever the other one was...here, disaster, an emergency, or for civil defense. Those are pretty broad terms.

REX SCHULTZE: Um-hum.

SENATOR MINES: And I'm not confident that it's narrow enough in scope that it covers just what I've heard you talk about.

REX SCHULTZE: Well, and what I would say to you is this. When we went to the emergency management director, our emergency was pretty obvious.

SENATOR MINES: Right.

REX SCHULTZE: But to get certification, you have to go to the emergency management director and tell them specifically what authority you want. So the stopgap or the safety net, as it were, for the public is that we have to get that approval for anything that we do from the emergency management director. And absent that, the board can't vote to do anything or make any expenditures. So that would be the safeguard I believe that you're looking for. It isn't an unfettered right.

SENATOR MINES: Right.

REX SCHULTZE: It's a right that is limited to what the emergency management director would define as an emergency

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or a disaster or a civil defense issue.

SENATOR MINES:      So the county emergency manager is still involved in the process, am I hearing you right?

REX SCHULTZE:      Absolutely.

SENATOR MINES:      Okay, so it isn't the school can make those decisions on their own?      Okay.

REX SCHULTZE:      They have to, if you look at the bottom, toward the bottom of the statute, the governing body has to approve what they're going to do but they cannot approve it until they have the certification of the emergency management director that they may do so.

SENATOR MINES:      Okay, thank you.

REX SCHULTZE:      You're welcome.

SENATOR WEHRBEIN:      Go ahead, Senator Fischer.

SENATOR FISCHER:      Thank you, Senator Wehrbein.      Welcome today.

REX SCHULTZE:      Thank you.

SENATOR FISCHER:      Did you pass this out?

REX SCHULTZE:      I did.

SENATOR FISCHER:      Okay, I have a question on it.      You included the phrase, including those under Section 77-3442...

REX SCHULTZE:      Correct.

SENATOR FISCHER:      ...after the word levies.

REX SCHULTZE:      Correct.

SENATOR FISCHER:      I'm assuming that includes more levies that you're talking about or what is that?

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REX SCHULTZE: That's just to include the levy limitation in 77-3442 on school districts, just to make sure that when we, to clarify that when we talk about levies, we're talking, including that levy that applies to school districts, which is now \$1.05, and may be changed. Because, you know, you're limited within the framework of school finance to whatever the levy limit is. And if you are at your levy limit, if you're a school district at your levy limit, you would not be able to raise additional funds to pay for those emergency expenditures.

SENATOR FISCHER: True, but counties are also under levies, correct?

REX SCHULTZE: Correct.

SENATOR FISCHER: And why don't you think it's necessary then to cite where the county levies are?

REX SCHULTZE: I believe 77-3442 covers the, I believe they cover the county levies, I may be wrong. I'm not familiar with county government that well. But I believe levy limitations, certainly for ESUs and I think for counties, is within that statute.

SENATOR FISCHER: Okay, thank you.

SENATOR WEHRBEIN: Two questions; you would still, based on my understanding here, would be under the auspices of the county emergency manager director, wouldn't you?

REX SCHULTZE: Yes, sir.

SENATOR WEHRBEIN: I mean, he would still be the authoritarian voice.

REX SCHULTZE: Yes, sir.

SENATOR WEHRBEIN: And secondly, would you feel that this includes terrorism, a terroristic event, where there might be a school bombing? Because in some sense that might be more...

REX SCHULTZE: The answer is yes.

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SENATOR WEHRBEIN:      ...likely than a natural disaster, sad but true.

REX SCHULTZE: The answer is yes. I think that would either fall under a disaster or a civil defense issue.

SENATOR WEHRBEIN: Emergency, yeah.

REX SCHULTZE: Or emergency.

SENATOR WEHRBEIN: , I would think so, too. If we go with this, we might want to be sure that's clarified because sometimes...you're an attorney, sometimes we work on words kind of hard, don't we?

REX SCHULTZE: That would be good.

SENATOR WEHRBEIN: I don't mean we, I'm not an attorney, excuse me.

REX SCHULTZE: I understand and I will, or I'll assist counsel.

SENATOR WEHRBEIN: Okay, thank you.

SENATOR PAHLS: Rex, just by looking this over and having past experience with school board members, do you sincerely...I mean, you think they'd take advantage of anything on an issue like this?

REX SCHULTZE: No, I do not.

SENATOR PAHLS: This is too much of a big deal for people to try and take advantage of it, it's how I read it.

REX SCHULTZE: I will tell you, just based on my experience at Norris, we took as little advantage of it as possible. When we got things to a point where we were, we got the building covered up and we got things secured, then we moved through normal processes as much as we could to acquire services through bidding and purchasing. So no, I don't fear that anybody is going to take advantage of this. I can tell you that we did not. We used it as, only as necessary.

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SENATOR PAHLS: Right, because those people are voted on by the local establishment. I mean, I...

REX SCHULTZE: Correct.

SENATOR PAHLS: ...to me, this seems like it should be a necessity.

REX SCHULTZE: Correct, it was just one of those circumstances where we're in a situation where we needed to proceed, one, expeditiously and, two, legally.

SENATOR PAHLS: Right.

REX SCHULTZE: And our board made every effort to dot every I and cross every T and that's why we went to the emergency management director to seek his assistance.

SENATOR PAHLS: Thanks.

SENATOR WEHRBEIN: Senator Mines.

SENATOR MINES: Thank you, Senator. Rex, one last question. It has to do with the insurance.

REX SCHULTZE: Yes, sir.

SENATOR MINES: Because there was an insurance shortfall and it would appear that the school was underinsured. And my question might be is would you be here asking for emergency levy authority if the insurance would cover all of your problems?

REX SCHULTZE: Actually, that's a very interesting point. As with any entity, whether it's your personal home or wherever, you hope your insurance is going to cover the amount. Norris' insurance policy turned out to cover everything that was subject to insurance. But the difficulty is, is when your building gets hit and it's destroyed, sometimes you have to make additional expenditures that you would not have otherwise made until a later date. And a lot of what we had was, was the fact there were, within the framework of insurance, they'll cover



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so much. And even if you're fully insured, you know, for instance if you have a car that you paid \$40,000 for and you've driven it for two years and it's totalled, well, you're going to get the value of the car but I'm still \$15,000 short if I get \$25,000 out of it. And essentially, that's the circumstance that you're in sometimes, that you have to replace something that you wouldn't have had to replace for a while. And that's what we had here is we had, they used the term betterment, the insurance did, and say, you're bettering your position. And so we had to pay the "betterment" that we had. You know, we had new HVAC system, well, we had to pay the betterment. We might have taken the opportunity to maybe move a door or upgrade a door. Well, we have to pay for the betterment of that. So that was really the case. We were fortuitous, it was fortuitous how our insurance worked out. And certainly, your example, Senator, where you could be underinsured would be one example of what may occur here.

SENATOR MINES: Okay, thanks.

SENATOR WEHRBEIN: Yes, go ahead.

SENATOR FISCHER: Thank you, Senator. A couple of other questions here. When Senator Pahls said he's worked with school boards and you know, Rex, I've been on a school board so my mind started to turn there to see how I could have used this maybe. How do you define an emergency? None of us are going to quibble about what happened at Norris, what an emergency was. What happens in a small school district if the pipes break and you have flooding all over the school and not only carpet damage but there's possibly computer damage? Is that an emergency?

REX SCHULTZE: Well, the statute says and defines emergency. It actually defines disasters and emergency. It's 81-829.39 says, disaster shall mean any event or imminent threat thereof causing widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause.

SENATOR FISCHER: So pipes bursting could be an emergency.

REX SCHULTZE: Pipes bursting could be, yes.

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SENATOR FISCHER: Okay, and I imagine that a wind storm, not a tornado, but a wind storm, we had one hit Valentine this summer and there was an immense amount of damage on the roof and the glass and whole library and the carpets. And so basically you're saying that, in that case, a school board can vote to exceed their levy to make those repairs?

REX SCHULTZE: No, they would have to go...

SENATOR FISCHER: To the emergency manager.

REX SCHULTZE: ...to the emergency management director, get a certification, one, that a disaster or emergency occurred, two, that they need to not go through the bid process to obtain a contract to do the work and, three, if subsequently they determine they are not able to fund that through their general fund, they may be able to come back and say to the emergency management director, we have a shortfall of X...\$100,000. We have a shortfall of \$100,000.

SENATOR FISCHER: I would assume when a superintendent enters into a contract under this scenario, that superintendent will know at that time if the district will be exceeding levies.

REX SCHULTZE: He will know at that time, should know at that time, whether he's going to exceed his, whether he will have sufficient funds produced by his present levy to pay for that amount or whether or not he has sufficient, and that would include building fund money, and whether or not he has sufficient budget authority.

SENATOR FISCHER: Would it necessarily include building fund money if...

REX SCHULTZE: It could include.

SENATOR FISCHER: ...since that has to be designated for a certain project?

REX SCHULTZE: That's correct.

SENATOR FISCHER: So it wouldn't necessarily include

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building fund money?

REX SCHULTZE: It wouldn't necessarily but it could. But...

SENATOR FISCHER: Okay, thank you.

REX SCHULTZE: Okay.

SENATOR WEHRBEIN: Anyone else? Thank you.

REX SCHULTZE: Thank you very much.

SENATOR WEHRBEIN: Any other proponents?

LARRY GROSSHANS: My name is Larry Grosshans, spelled G-r-o-s-s-h-a-n-s. I reside at 801 Russell Circle in Firth, Nebraska. I'm a retired school administrator. I'm used to talking to large groups of students and parents and faculties. I'm not used to talking to state senators so if I appear a little nervous, you'll know why. I actually served as the assistant superintendent in charge of personnel and curriculum for the Norris public schools for 25 years before my retirement, the first of July in 2003. I like to tell people that after I retired, the place became a disaster but, you know. (Laughter) And I've since been elected to the Board of Education at Norris and just completed my first year term. You know, we have been talking about the F4 tornado that made a direct hit upon the school facilities the evening of May 22. And Rex already alluded to the fact that the cost of that rebuilding project was near \$36 million. There are some things that we at Norris were very thankful for. Obviously, the first thing is the fact that the tornado hit the evening of the day after school that we dismissed for the summer vacation. Had it hit during the course of the school day, the lives of some 1,800 students and another hundred and some staff members would certainly have been at jeopardy. The other thing that was maybe fortunate is the fact that the tornado hit so soon after school was out because we did at least have some time to try and prepare for school the following fall. Had the tornado hit the latter part of July or first part of August, I have no idea what we, in fact, would have done for educating that 2004/2005 school year. The fact that I'm here is simply what you've already been talking

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about. We were able to seek and get permission from the director of the, you know, county emergency management office in order to deal with this situation in a fiscally financial manner and as expediently as possible. And because that permission was granted to us, we were able to open school on September 7, only two weeks after our originally planned date. Now you do realize that we spent that year of 2004/2005 with a lot of contractors on and around the facilities and a lot of banging going on. But the school is now back in the manner it was originally and with some betterment. I'd like to make a couple of quick comments based on some of your questions earlier. At the time of the tornado and the rebuilding process, I was retired. I wasn't a member of the Board of Education nor was I any longer a member of the administrative staff. However, there are, in my opinion, several issues here that maybe you have raised that I would like to address and, quite frankly, aren't on my notes. One is the fact that, regardless of when this kind of thing happens, according to my understanding of the bill, the county person who, director of the emergency management services, has to agree with the decision that, in fact, the school or the local government entity has experienced a disaster of whatever nature it might be. The second thing is, is you have a six-to nine-member Board of Education in that school district that also has to vote to authorize use of those funds or to levy additional funds if that should ever be necessary or to utilize funds that exist already in the budget. My purpose here is simply to indicate to you that our experience was very, very positive with our insurance company, with Doug Ahlberg of the emergency management offices here in Lancaster County. What we are asking you to consider is to clarify the fact that schools are included in this particular act or in this particular bill so that if what happened to Norris should happen to someone else down the road...whether it's a tornado, a civil defense disaster, or the result of terrorism...that whoever that manager is, is clear that he can rule that schools do fall under the auspices of this act. I thank you for listening to me.

SENATOR WEHRBEIN: Okay, thank you, Larry. Questions from anyone? I see none. Thank you.

LARRY GROSSHANS: Thank you.

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VIRGIL HORNE: Senator Wehrbein, members of the committee, my name is Virgil Horne, V-i-r-g-i-l H-o-r-n-e. I'm the paid lobbyist for Lincoln Public Schools. Today, I'm also representing the Greater Nebraska Schools Association. This bill is asking this Legislature to allow school districts to do the same things that cities, villages, and counties can do. And I would simply put to the committee the fact that there's probably no other building in a city of, in most cities or villages in the state of Nebraska that has a greater impact if it's not usable than the school building. Now if the mayor wants to declare an emergency because the city hall or county courthouse has been destroyed, there are other ways you can handle that. People won't get records as quickly, they won't get some other kind of services that they require to have as quickly. But they also won't have anywhere from 50 to 300, or in the case of Norris, 1,800, or in the case of some other school districts, even greater numbers of students arriving at their door within a matter of, given the time of the storm, a week. This allows that to happen. This allows the people who are educators to take immediate action in the same way that you're allowing mayors to take immediate action, you're allowing the village person who's in charge of doing those kinds of things. There are safe gaps. The questioning is along the lines of, will school boards take advantage of this? They will take advantage of everything they can within the legal rights of their ability in order to get that school open so kids can come back. Because remember, there's also another side of this. The longer they can't get those kids back in school, the longer they're going to go to school some other time. Because it's not like the state says, king's X, you students now don't have to go to school this year. They will still have to go to school. So I would encourage you to advance this bill and I would further encourage, given this particular session and the way things are going, that if there's something you can tie it on to, it certainly would be dandy. Because, I mean, this can happen anywhere in the state at any time. We hear all this talk now about Katrina and whether they're ready for it again down there. Well, we're facing the same thing coming up, whether it's a snowstorm that collapses a roof or whether it's a tornado or whether it's broken pipes. Thank you.

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SENATOR WEHRBEIN: You're seeing something we don't see, hmm? (Laughter) Questions?

SENATOR PAHLS: Virgil, I have a question. So you're telling me if I ever be a mayor of town, I have the ability to use this?

VIRGIL HORNE: The way I read this, you can. And I would defer to legal counsel and people who know a lot more about this kind of stuff than I do. But that would be my understanding.

SENATOR PAHLS: So there's a possibility I could be a mayor of a town and also president of the school board, could I not?

VIRGIL HORNE: Certainly.

SENATOR PAHLS: So if you're going to trust me as a mayor, I'd hope that same trust would be used in the school board.

VIRGIL HORNE: In my interpretation of what this bill does, that's exactly what we're asking to do. And I, again, I'd defer to your legal counsel or the legal counsel behind me.

SENATOR PAHLS: Thank you.

SENATOR WEHRBEIN: Thank you, Virgil.

VIRGIL HORNE: Thank you.

SENATOR WEHRBEIN: Anyone else proponent? Opponents, anyone opposed? Neutral? Waiving? Senator Schimek waives. That will close the hearing on LB 1059 and we will now move to LB 1106 and Senator Schimek will return. On the other hand, we ought to adjourn, I think, right now. (Laughter)

SENATOR MINES: Second. (Laughter)

SENATOR SCHIMEK: Wait a minute.

SENATOR WEHRBEIN: Oh, I can't do that, can I?

SENATOR FISCHER: (inaudible) miss that opportunity.

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SENATOR SCHIMEK:      We are now going to open on Senator Raikes' bill. Senator Raikes, welcome to the committee.

SENATOR RAIKES: Senator Schimek, members of the Government, Military and Veterans Affairs Committee, Ron Raikes, District 25, here to introduce to you today LB 1106. I should let you know that I come to you today with heavy heart knowing that, because of term limits, I will only be able to bring you this exact same bill two more years. (Laughter)

SENATOR SCHIMEK:      And we, on the other hand...never mind. (Laughter)

SENATOR RAIKES: Legislative Bill 1106 offers a clarifying change with regard to county zoning authority on buildings located on farmsteads that are used as residences. Currently, state law requires counties to determine whether nonfarm buildings used as residence shall be subject to zoning regulations. However, the definition of nonfarm buildings does not include buildings used for agricultural purposes. As a result, any building used as a residence is outside of the county's potential zoning authority if the building is also used for agricultural purposes, living in a barn. The scenario prompts two questions for the committee. First, should counties be allowed to have zoning authority on farmstead buildings used as residence regardless of their agricultural use, number one? If that answer is yes, then the second question is, how do you amend the language to make it happen? I think we've gotten hung up on both of these questions in the past. LB 1106 offers an answer to this question. The bill closes this loophole by amending the language in Section 23-114.03 to clarify that a county may determine whether buildings located on farmsteads used as residences shall be subject to zoning regulations and permit requirements. This change reflects what I believe is the intent of the current law but is technically unaccomplished. My suspicions are that there are relatively few instances that fall under this scenario. However, it does happen. Perhaps the most common occurrence is when

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someone renovates his or her barn to use as living quarters. Under current law, if the barn is used for agricultural purposes, as most barns are, it is excluded from the definition of nonfarm building and is thus outside the county's potential to impose zoning regulations. That being said, you could make the claim that the county zoning authority on farmstead residences is determined more by buildings used for agricultural purposes than it is by its residential use. This bill would clarify the language so that residential use is the sole determinant of county zoning authority with regard to farmstead buildings used as residences. (Long pause) (Laughter)

SENATOR SCHIMEK: That must conclude your remarks, Senator Raikes.

SENATOR RAIKES: I'll quit, thank you.

SENATOR SCHIMEK: Thank you very much for your testimony. Are there questions? Yes, Senator Langemeier.

SENATOR LANGEMEIER: Chairman Schimek. Thank you, Senator Raikes. Can you give us an example?

SENATOR RAIKES: I hope that one of the testifiers can do that. I'll give you, there was an example, I think, of a person who lived in a residence such as this in Lancaster County. There was some sort of emergency, I can't remember exactly what, because it was not subject to zoning and permit requirements, the emergency authority didn't know where it was, ran around the section looking for it, never did find, or didn't find it in time for the, you know, to save the life or I can't remember the exact circumstance. But it would deal with situations in which you've got a building that ostensibly or actually is a farm building and someone is using part or all of the building as a residence.

SENATOR LANGEMEIER: So this would be typically a conversion? You're not saying people go out building barns and then, months later, turning it into a house as well. You're thinking, not getting a building permit, just converting some old sheds?

SENATOR RAIKES: Well, it's a good question. There's a very



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nice residence just east of town that I think was moved to the site as a barn and it's a residence. I mean, it's one of the kit barns from way back when. And so probably you get instances where that does happen.

SENATOR LANGEMEIER: As an appraiser, I have seen lot's of them, quite creative.

SENATOR RAIKES: Um-hum.

SENATOR SCHIMEK: Yes, Senator Fischer.

SENATOR FISCHER: Hello, Senator Raikes. The problem then on the zoning is with the emergency numbers, is that the problem?

SENATOR RAIKES: Well, that's at least one that is brought to, that I'm aware of. There may be others. There may be the general issue of whether or not the construction and other aspects of it are appropriate for residential use as compared to nonresidential use.

SENATOR FISCHER: So then if the counties are allowed to zone, then the residence has to meet certain codes.

SENATOR RAIKES: Yes, that...yeah.

SENATOR FISCHER: If it's not zoned, it doesn't have to meet code?

SENATOR RAIKES: Right.

SENATOR FISCHER: Okay.

SENATOR RAIKES: That would be my interpretation, yes.

SENATOR FISCHER: Okay, thank you.

SENATOR SCHIMEK: Senator Wehrbein.

SENATOR WEHRBEIN: Believe it or not, I don't want to drill you, but I mean, I hope somebody behind you knows. I don't see the problem and so I'd like to know the details. And I don't know that you...well, I'm serious. You know, I mean,

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we have got a very nice barn and very nice building apartment in our county. Very, very, very nice. And I've never heard of a problem with it. So I don't know what...

SENATOR RAIKES: Is it zoned or...

SENATOR WEHRBEIN: It's rural.

SENATOR RAIKES: ...has it been subjected to the...

SENATOR WEHRBEIN: It's ag, it's zoned ag.

SENATOR RAIKES: And so I take it it's a building on a farmstead.

SENATOR WEHRBEIN: It's a 150-year-old barn that somebody built a multithousand apartment inside it. It's 18-inch rock walls.

SENATOR RAIKES: Is it used, is it a farm building or a nonfarm building?

SENATOR WEHRBEIN: Both, they keep horses below and live above.

SENATOR RAIKES: Okay, well, I think the issue is that if you had a building like that in Lancaster County, as I understand it, there is at least question that, because it is used for agricultural purposes that, even though it's also used as a residence, it cannot be subjected to zoning and permit requirements.

SENATOR WEHRBEIN: Okay.

SENATOR RAIKES: That's the issue.

SENATOR WEHRBEIN: Even though it has been there? I mean, is that why this is not a problem at home because it's been there? I mean...

SENATOR RAIKES: Well, you're talking about new construction versus...

SENATOR WEHRBEIN: No, this is...

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SENATOR RAIKES: ...existing...

SENATOR WEHRBEIN: ...this is remodeled.

SENATOR RAIKES: Well, and...

SENATOR WEHRBEIN: And I didn't know they had trouble.

SENATOR RAIKES: ...you, well...

SENATOR WEHRBEIN: I didn't know there was any trouble there.

SENATOR RAIKES: If you're going to do an extensive remodeling and you've got a residence that is not on a farmstead or clearly not a farm building, you would or could, at least, be required to get a permit to do that work. And the question is, if it's simply a building, a part of a building that is a farm-use building, an agricultural-use building, would you also be required to get a permit?

SENATOR WEHRBEIN: And under present law, apparently the county board is unsure?

SENATOR RAIKES: That's right, that's right.

SENATOR WEHRBEIN: Okay, thank you.

SENATOR SCHIMEK: Senator Langemeier has another question.

SENATOR LANGEMEIER: One more question, then I'll quit. Thank you, Senator Schimek. Does this affect the ability to assess these properly in some...to determine...

SENATOR RAIKES: Well, I think it would. I don't know if that's the driving force here but...it may well be. I doubt that, well, and I don't know. You may know this better than I, whether you have to, whether the zoning permit type requirement is directly connected to assessment function. I would suspect they at least share information. I went out and looked at this house and yes, in fact, or they applied for a building permit and that information goes to the

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county assessor so there is, in fact, notification of the county assessor that there's a change here which maybe should be subject. So yeah, I would think that maybe even though that isn't the primary purpose, it may be part of the...I think I've got some guys here just dying to correct all the answers that I've given you.

SENATOR LANGEMEIER: They're nodding.

SENATOR RAIKES: But I'll keep speaking as though I know what I'm talking about. (Laughter)

SENATOR LANGEMEIER: Thank you.

SENATOR SCHIMEK: This is unusual behavior. Now Senator Raikes, I think this is an easy question that I'm going to ask you. As I look at it, this is exactly the same bill as it was before. There haven't been any changes, right?

GORDON KISSEL: A little.

SENATOR SCHIMEK: A little. Then I'll wait and ask the question of somebody who is behind you. Thank you very much for being here.

SENATOR RAIKES: Thank you.

SENATOR SCHIMEK: First proponent of the bill?

KERRY EAGAN: Good afternoon, Senator Schimek, members of the Government, Military and Veterans Affairs Committee. My name is Kerry Eagan. I'm the chief administrative officer for Lancaster County. First, I need to thank Senator Raikes for bringing this bill. It seems like year after year after year. It is important to Lancaster County and maybe I can explain briefly in my testimony why it is an important issue to us. When I started with Lancaster County, oh, 1990 was with the Lancaster County attorney's office. One of the issues that we raised was this question of farm buildings versus nonfarm buildings with regard to what our zoning authority applied to, specifically, what we could require building permits for. The county attorney researched this issue extensively and came to the conclusion that farm buildings were beyond the scope of our ability to require

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building permits. And our power comes through Section 23-114.03, as Senator Raikes pointed out, and basically that gives us authority over nonfarm buildings. And then it provides a definition at the end that says, for purposes of this section and Section 23-114.04, nonfarm buildings are all buildings except those buildings utilized for agricultural purposes on a farmstead of 20 acres or more which produces \$1,000 or more of farm products each year. So you look at that definition and that sort of sets the whole legal issue, is that if you have any building that's on a farmstead 20 acres or more, produces \$1,000 worth of income, a colorable legal argument can be made that every single building on that farmstead is involved in the farm operation. You might have something in the cellar of your home that's part of the farm process. Based on this analysis, the county attorney said, no, counties do not have authority to regulate any buildings on a farmstead 20 acres or more producing \$1,000 worth of income; \$1,000 worth of income is a minimal amount. It becomes an issue to Lancaster County specifically because we have literally hundreds of lots throughout the county that are 20 acres or more and really are nothing more than glorified residences, you know, they're acreages. That's one issue for us. Another issue is that even if it is a farm, a 600 acre farm, we believe that if it's used as a residence, building codes ought to apply. Electrical codes ought to apply, water codes ought to apply. Any building codes ought to apply to that just from a pure public safety point of view. A third aspect of it is, is that our authority to require accurate addresses is tied to the zoning authority, too. So we feel that it's very important that we be, have the legal authority to require an address to post or to keep an accurate address that meets our standards for addressing, that emergency management can respond to. The specific story that Senator Raikes referred to was in 1998, which really got us going on this issue. It's really been that long, it's been almost eight years, where a woman was cut hanging a picture and the picture fell and a piece of glass cut her femoral artery. Her address, in a home which had no building permit because it was on 20 acres or more and it did produce some farm income, was terribly inaccurate. It was on the wrong street. They liked the name of the street more than they liked the accurate address. The sheriff's deputy literally drove around the section line looking for

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the driveway. Finally, her ten-year-old son was out waving. By the time they got in to her, they had lost about half hour and she had bled to death. So that's really what spurred us into starting our redoing of all the addresses in the county. And then one of the recommendations that came from our addressing committee that followed that was that we need to go to the Legislature to clarify that if a building is located on a farmstead and it is used as a residence, regardless of whether it's involved in the farm operation or not, it should require a building permit and it should have an accurate address on it. So that's some of the historical background which led us to pursue this piece of legislation literally since 1998. We thought we had the problem cured with LB 366 in 2001. That bill proposed the exact same language that we have here today in LB 1106. That language, which is offered here in LB 1106 is that, says the county board may decide whether buildings located on farmsteads used as residences shall be subject to such county's zoning regulations and permit requirements. It's permissive if counties don't want to do this out west or somewhere else, then they don't have to. It's permissive language, it's enabling authority for a county to require building permits on these types of residences. At the last minute, there was a change made to that bill, which is the language we're now seeking to strike. And they took out that language right at the last minute and substituted in, counties shall determine whether nonfarm buildings used as residences shall be subject to a county's respective zoning regulations and permit requirements. Nonfarm should have said farm. If that word had been "farm", then everything would have been okay. But as soon as you put in the word "nonfarm", we already have the ability to regulate nonfarm buildings. And by definition, those are all buildings except those buildings located on 20 acres or more, producing \$1,000 worth of income. So it's all very legally twisted in its analysis but that's why we've come back again, seeking a clarification to LB 1106 to put in the original language that was proposed that would be permissive and allow a county board, in its discretion, whether to require building permits. So, you know, I guess a barn could be used as a residence. But I think I look at that as more of a peripheral issue. Really, the issue is whether any residence on a farmstead where people are living should be built to building code. It's just a public safety issue and

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should have an accurate address, which we think is tied into this. I would indicate that this committee heard LB 1154 back on January 24, which is the city of Lincoln's version of this same bill. Their statute is a little bit different. It was even more restrictive than the counties. That bill was advanced to General File and I would request the same consideration for LB 1106. They really are companion bills. When we tried to amend it two years ago, the city came in at the last moment and added some very confusing language to our bill to give them the same authority. And it just confused everybody, probably more than I have right now. But so we're back again and I just can't thank Senator Raikes for the tenacity that it's taken to try to get this bill through. It is important to Lancaster County and we feel that it is necessary to clear up the ambiguities that exist in the statute now. I'd be happy to answer any questions.

SENATOR SCHIMEK: Thank you, Mr. Eagan. Are there questions? Yes, Senator Wehrbein.

SENATOR WEHRBEIN: I'm still trying to grasp it. So how big a problem is this? Is this widespread on 20 acres or more, is that...

KERRY EAGAN: We have a lot of acreages in Lancaster County because, in order to qualify for a residential use in the agricultural zoning district, you have to have more than 20 acres. That's just the basic use. There are other provisions to get around that. So there are literally hundreds of these residences in Lancaster County. That's why my county board would probably exercise its authority with this enabling statute to require that each one of those residences have a building permit. There was a corresponding question about whether there's an assessment aspect of this and there is. About five years ago, there was a bill passed that said any building permits have to be filed with the assessor so that they can pick up the value on it. Because prior to that, a lot of these properties had half-million-dollar homes on them that the assessor simply wasn't picking up because there weren't building permits required. So there is an assessment component of it that was picked up in a separate statute. I intended to look that up before I came over but I didn't quite get that done.

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But yeah, that is an issue that corresponds with this. If you require a building permit then you know the assessor is going to get the true value on the building as it should be for purposes of equalization.

SENATOR SCHIMEK: Senator Langemeier has a question.

SENATOR LANGEMEIER: Chairman Schimek, thank you. And Mr. Eagan, thank you for your time. So if I have 30 acres and I want to breed horses and I want to put up a 60 by 150 riding arena pole shed. Currently, I don't need a building permit for that in Lancaster County?

KERRY EAGAN: Probably not, if that falls as an agricultural use and that sounds like an agricultural use to me. And if it produces \$1,000 worth of income, you'd meet the definition of a farmstead and there would be no building permits required whatsoever. We are forbidden from requiring building permits by state law.

SENATOR LANGEMEIER: So then while I'm out there working these horses and I decide, I hate driving home late every night and coming out early every morning, I just start building a house inside. I still don't need to get a building permit?

KERRY EAGAN: Well, it's amazing how you can always come up, I guess, with a hypothetical that maybe stretches what is meant by residence and what is not meant by residence. If it falls within the definition of a residence, which is generally where a person lives and when they leave, they intend to return and that's their permanent home. Then that would clearly fall within. If it's just, I'm out there one night a week, I don't know. That's a, it's an interesting hypothetical, Senator.

SENATOR LANGEMEIER: Okay.

KERRY EAGAN: If it qualifies as a residence, this bill would require a building permit. If it's not a residence, then it wouldn't.

SENATOR LANGEMEIER: But without this bill, you're saying it could happen.



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KERRY EAGAN: Yes, without this bill, that definitely could happen.

SENATOR LANGEMEIER: Okay, thank you.

KERRY EAGAN: You're welcome, Senator.

SENATOR SCHIMEK: Seeing no further questions, thank you for being with us. We appreciate it.

KERRY EAGAN: Thank you, Senator.

SENATOR LANGEMEIER: Can I ask one more question?

SENATOR SCHIMEK: Oh, certainly.

SENATOR LANGEMEIER: One more question before you leave.

SENATOR SCHIMEK: Senator Langemeier.

SENATOR LANGEMEIER: You put in here the permissive language of may. If this is truly for public safety, if it's good for Lancaster County, why wouldn't it be good statewide? Are you trying to please somebody with the may or...

KERRY EAGAN: Well, yes, yes we were. Our original language was mandatory and we had objections from senators in western Nebraska that didn't think we ought to be mandating that for all the counties. So the required language was changed to permissive language.

SENATOR LANGEMEIER: Okay, thank you.

KERRY EAGAN: You're welcome.

SENATOR SCHIMEK: Thank you very much. We appreciate your time. Next proponent?

ELAINE MENZEL: Chairman Schimek and members of the committee, my name is Elaine Menzel, it's M-e-n-z-e-l. And I'm appearing on behalf of Nebraska Association of County Officials in favor of LB 1106 and I am appearing for the same reasons in favor as the introducer and Kerry Eagan.

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And that's essentially to be nonrepetitive, I will say that I'm for the same reasons.

SENATOR SCHIMEK: Thank you, Elaine. Are there questions? I just have one. Did NACO come in in opposition to last year's bill?

ELAINE MENZEL: No.

SENATOR SCHIMEK: I don't see that they did.

ELAINE MENZEL: I don't think we appeared at all.

SENATOR SCHIMEK: You didn't, I didn't think so. Okay, thank you. Oh, Senator Wehrbein.

SENATOR WEHRBEIN: You apparently don't think counties have that authority now. I'm kind of surprised that they don't have a little more authority in this area now.

ELAINE MENZEL: I think, for the same reasons that Kerry has indicated, we believe that there are problems.

SENATOR WEHRBEIN: I guess I won't pursue it. But I...

ELAINE MENZEL: Well, unfortunately, the zoning administrator who was going to testify was unable to be here because of the weather.

SENATOR WEHRBEIN: Okay. There's probably some technicalities here that I don't grasp so I'll let it go, I guess, for now.

ELAINE MENZEL: Well, and I don't know that I fully understand it either but...

SENATOR WEHRBEIN: Okay, thanks.

SENATOR SCHIMEK: Thank you, Ms. Menzel.

ELAINE MENZEL: Thank you.

SENATOR SCHIMEK: Pleased to have you with us. Are there other proponents of the bill, other in favor? Any opponents

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of the bill, anyone in opposition? Neutral testimony? Seeing none, that will close the hearing on LB 1106 and we will open the hearing on the next bill. And I believe Senator Cunningham (sic) is on his way. Next bill is LB 1185. So we'll just stand at ease for a minute.

(RECESS)

LB 1185

SENATOR SCHIMEK: Senator Connealy, we're happy to have you with us today.

SENATOR CONNEALY: Well, thank you.

SENATOR SCHIMEK: We're ready to open on LB 1185 whenever you are ready.

SENATOR CONNEALY: Thank you. Senator Schimek, members of the Government Committee, I am Matt Connealy. I have the honor of representing the 16th Legislative District, which includes Stanton County. And I'm here today to introduce LB 1185. LB 1185 would allow counties to enact ordinances to address the control of dogs and cats and to address towing. Ordinances adopted by counties may not be imposed within the boundaries of incorporated municipalities and shall not extend into the extraterritorial jurisdiction of cities and villages. This legislation was brought to me by actually Woodland Park SID in Stanton County. And they're very close to Norfolk, Nebraska, but they are in the next county. They're actually the largest grouping of people in Stanton County. They're not an incorporated village or city, but they're bigger than any other town in the county. But allowing counties to adopt these specific ordinances, Woodland Park would be able to deal with some of their concerns. I'd be happy to answer any questions.

SENATOR SCHIMEK: Thank you, Senator Connealy. Are there questions? Senator Burling.

SENATOR BURLING: Thank you, Senator Schimek. Senator Connealy, thank you. In my county, they've dealt with pets or dog kennels or type simply by zoning regulations. That's

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not satisfactory in all cases or do you know...

SENATOR CONNEALY: I think there's a representative of Woodland Park to answer their specific questions of that.

SENATOR BURLING: Okay.

SENATOR CONNEALY: But I think there are avenues. I think there's ways where a city could reach out and do it, too. But it also does change some other perspectives that are in place. And this is the attempt that they would like to make.

SENATOR BURLING: Okay.

SENATOR SCHIMEK: Senator Wehrbein has a question.

SENATOR WEHRBEIN: I'm going to ask you this question so I won't be so dumb when the other ones come up. What's your definition of towing?

SENATOR CONNEALY: Well, maybe they'll tell you. (Laughter) I think it's for cars that are parked illegally and blocking things and it's auto towing to...

SENATOR WEHRBEIN: Okay, well, I admit, I assumed that. But I don't assume anything anymore here, so...

SENATOR CONNEALY: Yeah, that's what it is, right. That's my...

SENATOR WEHRBEIN: We probably ought to define what towing is.

SENATOR CONNEALY: That's my understanding.

SENATOR WEHRBEIN: Okay, thank you.

SENATOR SCHIMEK: Senator Langemeier has a question.

SENATOR LANGEMEIER: Thank you, Chairman Schimek. Thank you, Senator Connealy. This is a countywide proposal. What if it was limited just to SIDs?

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SENATOR CONNEALY: I think that that would probably handle their problem. But this is so the county could do what they can't do now and that was the proposal that they asked me to present to you.

SENATOR LANGEMEIER: Thank you.

SENATOR SCHIMEK: Thank you very much for being with us today.

SENATOR CONNEALY: Yes.

SENATOR SCHIMEK: We will now take proponents of the bill. Welcome.

MARK FITZGERALD: Hi. Senator Schimek, members of the committee, my name is Mark Fitzgerald, F-i-t-z-g-e-r-a-l-d. I am an attorney from Norfolk, Nebraska. I have the privilege of representing several sanitary improvement districts that surround Norfolk. All have existed for more than ten years and most have existed for more than 20 years. They are more or less permanent. They're not going to be annexed by the city of Norfolk in the reasonable future. As a matter of fact, I do not believe the city of Norfolk has any present interest at all in annexing any of these SIDs. By far, the largest of these SIDs is SID 1 of Stanton County, Nebraska, which is essentially Woodland Park subdivision. This is a community of about 1,900 residents that exist and have lived in this, essentially, residential subdivision which has the unique fortune and misfortune of being half within the zoning jurisdiction of the city of Norfolk and half not within the zoning jurisdiction of the city of Norfolk. There are about 540 households in Woodland Park. I think there are only two businesses. Regularly, since my representation of this SID 1 began, and I'm told over the history of SID 1, people have come to the board of trustees to ask the board to do something about blocked sidewalks, that is usually something like a car blocking a sidewalk; abandoned vehicles, cars parked too long and nothing can be done about that; and dogs at large. Most of these residences were built in the 1960s. They have either no garages or most of them have one-car garage in a family with generally more than one car. So the people are looking for places to park and that is a continual problem for

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SID 1. SID 1 board of trustees, several of whom are here today, are unable to address these problems under the present state of the law. They have no specific power in this area. That is, these kinds of police power actions or powers that ordinarily a village or a city of the second class would have. The board of trustees must continuously tell these people, these residents, these members of their community that they cannot do anything for them in these areas. And originally, when we were looking at some legislative way out of this situation, we were proposing that SID powers be expanded to include the power to make these kinds of, or take these kinds of actions. That is, to remove obstructions from sidewalks, to be involved in abandoned car issues, to control at-large dogs and cats. The consensus of some of the folks that we were dealing with, including staff members in the Legislature, was that SIDs are restricted, specifically-designed creatures and that villages and cities of the second class are chartered by the Legislature and have these kinds of police powers whereas SIDs are more specially-designed types of districts. So when it became possible to approach this issue with the idea that the county government could pass ordinances to help us out in this area, that was an attractive proposition. As it stands right now, I have been involved in the situation where the Stanton County Sheriff is left to try to persuade residents that their car parked across the sidewalk presents a dangerous situation and the residents saying, you know, you really have no enforcement power in this area. LB 1185 provides a mechanism to resolve some of the problems that SID 1 has and we are proponents of this bill with two suggestions for amendments. Number one, LB 1185 addresses dogs and cats at large and towing. But it does not address the issue of obstructed sidewalk. Section 17-555 and 17-557 empower cities of the second class and villages to remove obstructions on sidewalks and to remove snow, ice, and mud on roads and sidewalks. A similar, appropriate type of power given to a county would also address this area. And this is a particular problem in SID 1 and that is, this is a subdivision that is not rural, that is essentially a suburban type of subdivision with one-car garages and two-car families. And lots of times, the cars are parked across sidewalks. If the county were to have the power to enforce obstruction on sidewalk types of issues, that issue would be addressed. And then secondly,

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the second area of suggested amendment is that, for some reason, the county ordinance power in LB 1185 is not to be imposed into the extraterritorial jurisdiction of cities. If that means zoning jurisdiction, then LB 1185 will only help half of the people in SID 1 and it may even create additional enforcement issues. I bring to the attention of this committee Section 39-1816, which grants the county board power to restrict parking outside the corporate limits of a city or village. We would suggest that it would be inappropriate for the counties to have ordinance powers along the lines of LB 1185 within the corporate limits of a municipality but that, with regard to areas outside the corporate limits, including areas within the zoning jurisdiction, I think it would be appropriate that the county have this type of power. So we're asking that Subsection 2 of LB 1185 be amended to remove that obstruction. Finally, we understand that LB 1185 indicates that the county would have the power to enact these ordinances countywide. We would suggest that if there are some concerns about rural interest, that is, that we maybe do not want the county supervisors or county commissioners to be regulating dogs and cats at large in largely rural areas or to be concerned about towing in largely rural areas, that LB 1185 could be restricted to only include those counties who have zoning plans and to R1 or residential type of zones within that zoning kind of plan. Are there any questions? I'd be happy to try to answer them.

SENATOR SCHIMEK: Thank you, Mr. Fitzgerald. Senator Burling has a question.

SENATOR BURLING: Thank you. Did I hear you say that your proposal to allow county ordinances would be limited in a statute by a list of the issues that you want to address, like cats and dogs and sidewalks, and that list would be in statute? Is that what you're asking?

MARK FITZGERALD: Right, LB 1185 essentially covers towing and covers at-large dogs and cats. What I'm asking with regard to this particular bill, Senator, is that LB 1185 be expanded to include obstructions on sidewalks.

SENATOR BURLING: Okay.

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SENATOR MINES: Senator Mines has a question.

SENATOR MINES: Thank you. Mark, tell me why covenants wouldn't accomplish what you're trying to change in state statute.

MARK FITZGERALD: Covenants might have resolved some of these problems early on. I'm not sure that I have ever seen, Senator, covenants that addressed, for example, obstructions on sidewalks. Also, but this subdivision was constructed at a time when there were one-car families. Now there are two-car families. I don't know that I've ever seen covenants that addressed dogs and cats at large.

SENATOR MINES: There are covenants that address those and...

MARK FITZGERALD: Certainly.

SENATOR MINES: ...I would imagine that if the majority of the residents of the SID you've been talking about are interested in controlling dogs and cats and sidewalk clutter, a simple covenant, assuming you could get a majority of the property owners to go along, wouldn't be sufficient. You then have a civil action as opposed to the county getting involved and regulating through ordinance.

MARK FITZGERALD: Right, Senator, I'm not sure how I'd do that with 540 different households and without having essentially a unanimous decision among the owners of the property with regard to the covenants.

SENATOR MINES: Would it not be a majority of the property owners?

MARK FITZGERALD: I don't understand that, Senator.

SENATOR MINES: Okay.

MARK FITZGERALD: That may be your understanding but I don't understand that, after you buy the house, that majority of property owners could, by a majority vote, change the covenants, unless it's written that they could.



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SENATOR MINES: Okay, thank you.

SENATOR SCHIMEK: Seeing no further questions, thank you for being with us today.

MARK FITZGERALD: Thanks, thank you.

SENATOR SCHIMEK: Appreciate your time. Are there other proponents of the bill? Why don't you just come on forward if you're going to testify and you can be in place.

LARRY RUTH: Senator Schimek and members of the committee, my name is Larry Ruth, R-u-t-h. I'm representing the Eastern Nebraska Development Council today in support of LB 1185. The Eastern Nebraska Development Council is an organization primarily in Omaha but it also has interests around other parts of the state that works primarily through sanitary improvement districts. I've said that word, Senator, I'll try not to say it again. I know that you don't particularly like that word in this committee. But I would like to just give our support to the bill. We followed this issue for a number of years. The question of authority to do something about it is an open question. I like your interest in covenants but I, as the previous witness thinks, you'd probably have to get agreement from the folks who own the property to have a new covenant put on the property unless the document setting up the SID gave authority in some way to the trustees to make that kind of a change. I just, I have a sense that you would need to have that approval. Sanitary improvement districts are, by their very nature, limited purpose political subdivisions. They're not a city, they're not a county. They have the limited purpose of raising funds to build infrastructure in new areas, usually residential but sometimes business, structures such as roads, sidewalks, lighting. And they don't have police authority, police enforcement authority and probably one very good reason for that is that the election of trustees, those who run the SID, is really a rather unique form of election. Property owners are the ones who vote, property owners are the ones who can serve on the board of trustees. And that changes over a period of time as to who can have what seats on the board of trustees. And it's just not the kind of political subdivision, I

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think, that would be normally thought of as having general or even limited police enforcement authority. But we do have an interest in following this. It just seems reasonable to give this kind of limited police authority to a political subdivision that has those kinds of origins by way of election and so on. And if there are appropriate ways you can limit that, perhaps through residential or otherwise, zoning, then that would seem to be further appropriate here, too. Thank you.

SENATOR SCHIMEK: Thank you, Mr. Ruth. Are there questions? Yes, Senator Wehrbein.

SENATOR WEHRBEIN: Really quickly, I should have asked the other speaker. They could incorporate as a town if they're five miles out, right?

LARRY RUTH: Yeah, I, that's a possibility. My understanding is that they would, that they don't have an interest in that. Perhaps you should have asked or ask that again.

SENATOR WEHRBEIN: I should have.

LARRY RUTH: But I don't...typically, SIDs are established and then they're annexed by a growing community nearby that wants to take over the SID and then bonded indebtedness is reduced to a certain amount and it's used as a development tool as opposed to incorporating as a new city.

SENATOR WEHRBEIN: Well, the reason I say, because I've been through some of these headaches and it's a bigger headache than dogs and cats and that's usually police enforcement on private property.

LARRY RUTH: Um-hum.

SENATOR WEHRBEIN: I mean, that's an ongoing battle, where I'm aware of. Sheriff says it's private property or it might be an association in this case, but, okay. I won't pursue it. Thank you.

LARRY RUTH: Those are interesting questions and it's amazing, I'd like to sit in on your committee hearings, how

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many questions on political subdivision make up an authority you can have even in a state like Nebraska.

SENATOR SCHIMEK: Yes, Senator Mines would like to question you.

SENATOR MINES: Thank you. Larry, rather than enable ordinances at the county level, why don't we allow SIDs to promulgate rules and regs or ordinances or resolutions or something within their own area? Why not do that?

LARRY RUTH: Well, that's what I was referring to earlier when I mentioned that it seems to me that political, that SIDs are limited purpose and the way that they are formed...

SENATOR MINES: Right.

LARRY RUTH: ...and the way they are maintained isn't consistent with the kind of political subdivision you'd like to give police authority to.

SENATOR MINES: Okay.

LARRY RUTH: Police enforcement authority is sort of a very basic authority you give to a political subdivision that is well represented, representative of the public, has elections, everybody can participate, and everybody has an opportunity to run for the office. That's not a sanitary improvement district.

SENATOR MINES: Okay.

LARRY RUTH: Thank you.

SENATOR SCHIMEK: Seeing no further questions, thank you.

LARRY RUTH: And I'm sorry I mentioned those words, Senator.

SENATOR SCHIMEK: That's okay, apology accepted. (Laughter) Are there other proponents?

DARROLD LIDGETT: Good afternoon, Madam Chairman, members of the committee. I'd like to say a few words about our SID.

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SENATOR SCHIMEK: Would you identify yourself, please.

DARROLD LIDGETT: Oh, yes. My name is Darrold Lidgett, I'm sorry, and the last name is spelled L-i-d-g-e-t-t.

SENATOR SCHIMEK: Thank you.

DARROLD LIDGETT: Several things that I would like to bring up on our SID and that's a little bit of the longevity. The longevity of our SID has probably been really one of the problems. SIDs were made to last only so many, a few years, maybe five years. And we're passing now into approximately there's a total of 35 years with our SID. And we have a lot of problems with our actually becoming a town. It just automatically builds into more and more problems as a town. And we don't have the authority to handle these situations and they keep coming up. And our constituents certainly deserve more than we're able to give them. And so we need this help in order to try to do something to help these people and that's why I'm here. I'm chairperson of the SID and I've been on as chairperson too long. Certainly, if they had term limits, I'd have been out a while back but that's the way it goes. But anyhow, I certainly would appreciate your consideration of this bill and hope that this would be passed so that we're able to do something to help these people. They're almost out there in a place where there's nothing can be done to help them. And they keep asking us and coming to us and what can we do to help? And so hopefully we can do this thing. And that's all I have, Madam Chairman.

SENATOR SCHIMEK: Thank you, Mr. Lidgett. Let me clarify, are you representing anyone or are you here...

DARROLD LIDGETT: I'm here for the SID.

SENATOR SCHIMEK: ...as an individual? You are here for the SID.

DARROLD LIDGETT: SID, that's correct.

SENATOR SCHIMEK: You may have said that but I must...

DARROLD LIDGETT: Yes, I did.

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SENATOR SCHIMEK: I missed it. Are there any other questions? If not, we thank you very much for being with us.

DARROLD LIDGETT: Thank you so much, appreciate that.

SENATOR SCHIMEK: Next proponent?

ELAINE MENZEL: Chairman Schimek and members of the committee, my name is Elaine Menzel, M-e-n-z-e-l. And I'm here on behalf of NACO in support of LB 1185, which would authorize counties to enact ordinances to address the control of dogs, cats, and to address towing. As you know, the ordinances adopted by counties may not be imposed within the boundaries of the extraterritorial area and this is an issue that you have been dealing with for the last several years. I don't recall specifically how many years. But in addition to authorizing counties, it would give public input in that it would require the county boards to publish notice of the proposed ordinances once a week for three consecutive weeks prior to that adoption of such an ordinance. I know that you dealt with it last year and the committee killed the bill. We're supportive of the bill still. It would have been more expansive last year but we're still supportive of it this year. One of the things, I believe it was 2003, when you had an interim study that looked at various states and the ordinances that various states had enact allowed counties to delegate. That report showed that there were approximately 33 counties that had ordinances. And they had such things as animals and junk control and maybe towing isn't junk control, but that was the nearest anomaly that I could find. So if there's any questions, I would gladly attempt to answer them.

SENATOR SCHIMEK: Are there questions from the committee? Seeing none, Elaine, thank you very much for being with us.

ELAINE MENZEL: Thank you.

SENATOR SCHIMEK: Are there any other proponents of the bill?

WILLIAM GOODPASTURE: Good afternoon, Senators. I'm William

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Goodpasture, last name G-o-o-d-p-a-s-t-u-r-e.

SENATOR SCHIMEK:    Would you do that again? I didn't catch it, your name.

WILLIAM GOODPASTURE: William Goodpasture.

SENATOR SCHIMEK:    Okay, thank you.

WILLIAM GOODPASTURE: G-o-o-d-p-a-s-t-u-r-e.

SENATOR SCHIMEK:    Got you.

WILLIAM GOODPASTURE: I'm a resident of Woodland Park. I've been there since 1980. I'm also a board of trustees member. A little history, I worked at Nucor Steel, one of the big steel factories up in northeast Nebraska. I served in the Nebraska National Guard for 27 years. I'm retired. I'm in favor of this bill, LB 1185. I've got, some of the concerns I have...I'm nervous.

SENATOR SCHIMEK:    Don't be, we're really nice people.  
(Laughter)

WILLIAM GOODPASTURE: When I first moved there in '80, I thought I was moving in the country. Well, the years went by, now I've got a grade school above me from kindergarten all the way up to the sixth grade. I've got a big park, we didn't have no sidewalks or nothing. So then in '86, it was in February, we didn't have sidewalks, kids walked down the streets all the time. Well, the rainwater come down, it was falling out, then it froze. Well, then all the traffic coming down from the school, well, a kid fell underneath of the car, just about got ran over. I ran out there and then at that time, I decided, myself, that I was going to start putting sidewalk in front of my place. And I got the other neighbors to do it. So we all got together and we put sidewalks in. Well, then this is from our own private use. Then over the years, we have gotten money from the franchise, from the cable com, not from the county, we put our own sidewalks in every year. We put in 600 feet. But I guess I'm here to testify on the safety part, that we need the law enforcement for cars that are parked across the sidewalk because kids, if they're parked across, the kids

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have to go around, back out on the street again, and they're going to get hit. And we can sit there up there in SID and pass all the ordinances we want but it don't mean a hoot. If we don't have a county to back it up, come out there, enforce it...and you say covenants. We've been there for 30, 40 years. We've got people coming in and going out, a lot of renters and all that. I just think this LB 1185 is a good thing, that where we got the county will sit to where they can uphold what we pass for the people of our community. We are just, we're left out there in a gray area, it's a damned if we do and damned if we don't. They call me a hillbilly up north there, so...(Laughter) I've never wore a suit in my life. (Laughter) I've got my army loafers on. But I'm just asking for your support on this bill. I mean, there's a lot of issues that you all sit down here, you don't...we're up there in the neck of the woods and we're just a small and little place, but we got a school, 245 children up there. And we just all need your help.

SENATOR SCHIMEK: Thank you, Mr. Goodpasture.

WILLIAM GOODPASTURE: You're welcome.

SENATOR SCHIMEK: Are there...by the way, you got over your nervousness just fine.

WILLIAM GOODPASTURE: Well, yeah. I'm just a blunt talker, I just...

SENATOR SCHIMEK: Are there questions from the...yes, Senator Fischer.

SENATOR FISCHER: Thank you for coming today.

WILLIAM GOODPASTURE: Yes.

SENATOR FISCHER: What county are you from?

WILLIAM GOODPASTURE: Stanton County, ma'am.

SENATOR FISCHER: Stanton County, and what town are you near?

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WILLIAM GOODPASTURE: Norfolk, about two miles from Norfolk. See, and I live right on the other...

SENATOR FISCHER: Norfolk doesn't want you?

WILLIAM GOODPASTURE: Well, no, they don't want us, matter of fact, they don't want us.

SENATOR FISCHER: They don't want to annex you?

WILLIAM GOODPASTURE: No, they just don't...I don't know if it's because our...we got three good wells but they just, we're just...

SENATOR FISCHER: You're across the county line?

WILLIAM GOODPASTURE: Right, we're in Stanton County, but we're Norfolk.

SENATOR FISCHER: Okay.

WILLIAM GOODPASTURE: And see, what they was talking about jurisdiction, I live on the other side of 37th Street. The two-mile radius is just where the street I live at and then I'm on the side of the, I mean, jurisdiction. Just like what the lawyer said, we're divided in two sections.

SENATOR FISCHER: And what school are you speaking about?

WILLIAM GOODPASTURE: Norfolk, it's Woodland Park Elementary School.

SENATOR FISCHER: Is it a Class I school?

WILLIAM GOODPASTURE: Some, yeah, (inaudible)...

SENATOR CONNEALY: It's part of the Norfolk...

WILLIAM GOODPASTURE: Yeah, it's part of Norfolk. Yeah, see, we, it's Woodland Park but it's in Stanton County, it's on the other side of the two-mile radius thing.

SENATOR FISCHER: Okay.



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WILLIAM GOODPASTURE:    It's a mess. (Laughter)    I ain't kidding you.

SENATOR FISCHER:    I appreciate you coming down. Thank you.

SENATOR SCHIMEK:    Are there other questions? Senator Langemeier.

SENATOR LANGEMEIER:    Thank you, Chairman Schimek. And thank you for your testimony, you're doing a great job.

WILLIAM GOODPASTURE:    Yeah, you're welcome, sure.

SENATOR LANGEMEIER:    Just for a little clarification, I've been in Woodland Park. And as you talk about moving to the country, Woodland Park is a very densely populated SID, in my mind. I mean, the houses are close together...

WILLIAM GOODPASTURE:    Yes.

SENATOR LANGEMEIER:    ...they're close to the street. You know, when you talk about covering your sidewalk, that's not three cars in the driveway, that's maybe one if it's not pulled all the way up, it's one car.

WILLIAM GOODPASTURE:    Right.

SENATOR LANGEMEIER:    I mean, you're close to your streets, your streets are very narrow...

WILLIAM GOODPASTURE:    Right.

SENATOR LANGEMEIER:    ...you park on both sides of your streets, if I remember correctly...

WILLIAM GOODPASTURE:    Right.

SENATOR LANGEMEIER:    ...which allows for like one car to go down the middle. If I have that described right, that's all I wanted to do.

WILLIAM GOODPASTURE:    Right, it's, so what we did, we decided as an SID to do some of the stuff on our own, put our own sidewalks in and protect the children of Woodland

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Park. I mean, we got kids coming from Norfolk, Winside. I mean, Woodland Park is a good school, it's growing. We've got some good people there teaching. But we just need some help from you all down here, help us with these dogs at larges (sic) and cars parked and kids darting around them, you know. And we can pass all the ordinance but it don't mean a hoot.

SENATOR SCHIMEK: Thank you. I have just one comment, perhaps...

WILLIAM GOODPASTURE: Yes?

SENATOR SCHIMEK: ...and I've heard this issue, not particularly about the sidewalks and streets and so forth, but I've heard about Woodland Park for a long, long time. And I know it's a problem and, you know, it's one of those problems that I'm not sure we can ever fix. But we will certainly consider...the thing we have to think about, too, are unintended consequences and there could be some to this. I mean, we haven't raised those questions and maybe when we do, we'll find out they're not very significant, but...

WILLIAM GOODPASTURE: Yeah, I think what it is, we're not giving, we're not trying to, for the people in Omaha and stuff like you all down here, we're talking about for the town commissioners and stuff in our area to where they will help us out, to where...

SENATOR SCHIMEK: But that's not what the bill says. It applies to all counties.

WILLIAM GOODPASTURE: Right.

SENATOR SCHIMEK: Yeah.

WILLIAM GOODPASTURE: To give the county commissioners, if they more or less would want to do that.

SENATOR SCHIMEK: Right.

WILLIAM GOODPASTURE: But see, most of them already have that because they're not an SID though.

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SENATOR SCHIMEK: Okay, thank you.

WILLIAM GOODPASTURE: I think.

SENATOR SCHIMEK: We appreciate your testimony and we appreciate you coming down.

WILLIAM GOODPASTURE: Okay, you all have a good day.

SENATOR SCHIMEK: Thank you. You must be from southern Stanton County, right?

WILLIAM GOODPASTURE: Yeah. (Laughter)

SENATOR SCHIMEK: Are there any others who wish to testify in favor? Any in opposition? Welcome.

DAVE NIELSEN: (Exhibits 1 and 2) Senator Schimek, members of the Government Committee, my name is Dave Nielsen, N-i-e-l-s-e-n. I'm a farmer from northern Lancaster County. I currently serve on the Nebraska Farm Bureau Federation state policy committee. I'm here testifying today on behalf of Nebraska Farm Bureau in opposition to LB 1185. A year ago, Farm Bureau was in front of this committee to register opposition to LB 56, a bill that would have given broad discretionary authority to counties to enact ordinances. While this bill limits the scope in ordinance authority to control dogs, cats, and towing issues, our concern is with giving this kind of authority to counties remains the same. While we appreciate the desire to help counties address issues related to these activities, we have great concerns as to the long-term ramifications of providing ordinance authority to the counties and, in particular, what it could mean over the long haul for agriculture in Nebraska. Our largest concern with giving county boards the ability to establish county ordinance stems from the growing disconnect that we see in the countryside where we have people moving into traditional farming areas who don't have any farming background and they're perceptions of country living don't match up well with the reality of country living. Odor, dust, early-morning and late-night farming with loud farm equipment are all a part of ag production and have been forever. However, we've learned not to take it for granted that everyone recognizes and understands that. Given some

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of the conflicts that we have seen relating to location of livestock operations in our state, particularly as it relates to odor issues, it doesn't take much of a stretch for us to foresee situations where county boards, especially counties with larger population centers and acreage development, could be pressured to place restrictions on agriculture to eliminate some of the perceived nuisance issues that come with common farming practices. While this bill doesn't provide a broad scope of ordinance power, it does start us down a path that our farmers and ranchers do not want to go; the proverbial camel getting his nose under the tent. We appreciate the concerns that are out there and the reasons for the bill introductions. But this bill would set a precedent that we do not favor. In closing, I appreciate your consideration of these comments and would encourage the committee to indefinitely postpone LB 1185. Thank you.

SENATOR SCHIMEK: Thank you, Mr. Nielsen. Are there any questions? Seeing none, thank you.

DAVE NIELSEN: Well, I got off easy.

SENATOR SCHIMEK: Yes, you did. (Laughter)

DAVE NIELSEN: Thanks.

SENATOR SCHIMEK: Thank you. Are there any others who wish to testify in opposition? Any in a neutral capacity? Seeing none, Senator Connealy to close.

SENATOR CONNEALY: Thank you, Senator Schimek and members. You know, this SID was put together before zoning, before the thought that this would never be accepted by the nearby community. I truly believe that they thought eventually that Norfolk would come and move that far and become part of that community. If Norfolk would actually move a little bit closer, then some of these solutions could be in another path. We just need to figure out a way to help these people. If the zoning jurisdiction went out far to cover the whole SID, then Stanton County could work out where they would accept the ordinances of the nearby community and enforce those because there are laws to do that. So there are other ways to do this if it would work out. But for

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this community of, like Chris said, of densely populated homes of modest means that don't have a lot of resources but do have problems that I think we need to address. Thank you.

SENATOR SCHIMEK: Thank you, Senator Connealy. Any questions? Seeing none, we appreciate your being here today.

SENATOR CONNEALY: Thank you.

SENATOR SCHIMEK: That will close the hearing on LB 1185 and that will close the hearings for the day. Thank you.